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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC

STATUTORY REVIEW OF THE SYSTEM FOR REGULATING RATES AND CLASSES FOR MARKET DOMINANT PRODUCTS	Docket No. RM2017-3

COMMENT OF THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

The National Association of Letter Carriers, AFL-CIO ("NALC") submits this comment on the Commission's December 5, 2019 *Revised Notice of Proposed Rulemaking* ("Revised NPR"), Order No. 5337.

INTRODUCTION

NALC applauds the Commission's proposals to shore up USPS's finances, by giving it additional rate authority to address both the increase in per-unit costs resulting from falling mail density and the costs of retiree liability amortization payments. These measures would provide added assurance for the foreseeable future that USPS will continue to compensate its employees in accordance with statutory requirements, pay rent, utilities, fuel and vehicle maintenance, and do whatever else is necessary to deliver the nation's mail.

Nonetheless, these two new proposals are incomplete, and can and should go further. In particular, there is no principled reason to limit the mail density proposal to increased costs that occur in the *future*, when the PAEA price cap has for many *past* years stifled USPS's ability to recoup unit costs driven up by falling mail density. Similarly, the Commission's retiree cost proposal arbitrarily draws a distinction between future contributions to the Retiree Health Benefit Fund ("RHBF"), for which additional rate authority will be given, and unpaid past contributions, for which no relief will be given. The Commission's proposal also makes an arbitrary distinction between the *amortization* portion of RHBF contributions, for which there will be additional rate authority, and the *normal cost* portion, for which there will be no relief.

NALC urges the Commission to modify its proposals in order to give USPS more complete relief. That would better ensure USPS's long-term financial health and thus protect its ability to provide reliable and timely mail service to the American people for years to come. Specifically, as discussed further below, NALC proposes that the Commission (1) modify its mail density proposal to allow USPS additional rate authority equal to the total increase that USPS would have been allowed had the Commission's proposal been in effect since 2009, and (2) modify its retiree cost proposal to allow USPS additional authority to address past unpaid RHBF contributions and future RHBF normal costs.

BACKGROUND

The Revised NPR proposes two measures to address USPS's "inability to achieve net income during the PAEA era." Revised NRP at 12. The first measure addresses the decline of mail density, defined as mail volume divided by delivery points. *See id*. at 12 n.15. The Commission notes that USPS's per-unit costs have increased as the number of pieces it delivers to each delivery point has fallen. *See id*. at 64. Falling mail density has driven up per-unit costs, but the existing price cap has prevented USPS from raising rates to address those increased costs. According to the Commission, "[t]he inability of the Postal Service to raise prices to account for these increases in per-unit cost threatens the Postal Service's financial stability by preventing it from achieving net income." *Id*. at 71. The Commission acknowledges this problem as a "shortcoming of the existing system" and proposes that, going forward, USPS be provided additional rate authority to address increases in per-unit costs resulting from declines in mail density. *Id*. Specifically, each year, USPS will submit to the Commission its calculation of the amount of additional rate authority to be made available as a result of declines in mail density. *See id*. at 78-79.

The second measure addresses the financial burden imposed on USPS by amortization payments for unfunded retirement liabilities. *See id*. at 91, 95. The PAEA requires USPS to make annual payments to the RHBF, to fund USPS's retiree health obligations under the Federal Employee Health Benefits ("FEHB") program. In part, USPS's annual payments to the RHBF constitute amortization payments, meant to pay down the Fund's unfunded liability. This unfunded liability is the amount by which the Fund's assets fall short of the amount of the Fund's liability for retiree health benefits earned by employees' *past* service. In part, USPS's annual RHBF payments pay for the FEHB "normal cost," meaning the Fund's liability for retiree benefits earned by employees in the *current* year.

For FY 2007 to FY 2016, the PAEA required USPS to pay certain scheduled amounts, which averaged $5.7 billion per year. Since FY 2017, the Office of Personnel Management has determined the amount of the annual contribution due. USPS made the statutorily required FEHB contributions until FY 2012, but has made none since.

In addition to its liability for retiree health benefits, USPS has an obligation to pay for pension benefits under the Civil Service Retirement System ("CSRS") and the Federal Employee Retirement System ("FERS").

As the Commission notes, the congressionally mandated payments to the RHBF constitute "one of the primary drivers of [USPS's] net loss." Revised NRP at 91. Accordingly, the Commission has proposed providing USPS, over a 5-year phase-in period, additional rate authority to allow USPS to make the required amortization payments to the RHBF, CSRS and FERS. *See id*. at 91, 95.

<u>DISCUSSION</u>

I. THE COMMISSION SHOULD PROVIDE USPS ADDITIONAL RATE AUTHORITY FOR PAST DECLINES IN MAIL DENSITY

In the Revised NPR, the Commission correctly diagnoses a significant "shortcoming of the existing system": the inability of USPS to raise prices to address increases in per-unit costs driven by declining mail density. Revised NPR at 71. The Commission seeks to remedy this shortcoming by providing USPS additional pricing authority commensurate with cost increases that result from future declines in mail density. *See* Revised NPR at 77. The proposal is sensible, but inadequate, as it fails to address the *past* effect that the acknowledged shortcoming in the PAEA rate system has had on USPS during the many years since implementation of the PAEA's price cap.

Since enactment of the PAEA, the combined effect of falling mail volume and increasing delivery points has steadily increased unit costs. As the USPS Office of Inspector General has observed, "[w]ith fewer pieces of mail and more delivery points, each piece of mail has to cover a greater share of the institutional costs of the delivery network." USPS Office of Inspector General ("OIG"), *Revisiting the CPI-Only Price Cap Formula*, Report No. RARC-WP-13-007 (April 12, 2013) ("*Price Cap Formula*"), at iv.

However, the PAEA price cap has prevented USPS from raising rates to recoup those rising costs. Because inflation has remained stuck at historically low levels for most of the PAEA period -- with annual CPI-U increases averaging less than 2% since the Great Recession -- the price cap has severely constrained USPS's ability to address cost increases from exogenous factors like falling mail density.[1]

As the Commission has explained, positive net income puts USPS on a "harmonious cycle:" it enables USPS to pay for capital improvements; capital improvements increase operational efficiency; operational efficiency reduces costs and improves service; and that, in turn, promotes demand for postal products and thus increases revenue. *See* Dec. 1, 2017 *Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products* ("2017 Proposal"), Order No. 4258, Docket No. RM2017-3, at 46. Net income also gives USPS the ability to pay down debt. *See id*. at 47. Over the years that

[1] According to the Commission, the average annual increase in the CPI-U from 2008 to 2019 was 1.8%. *See* https://www.prc.gov/sites/default/files/111219%20CPIweb.pdf.

USPS has been unable to raise rates in response to declining mail density, it has experienced the reverse of this "harmonious cycle." Its level of capital expenditures "pales in comparison to that of its competitors." OIG, *Peeling the Onion: the Real Cost of Mail*, Report No. RARC-WP-16-009 (April 18, 2016), at 2. For example, it has an aging fleet of delivery vehicles that are nearing or have exceeded their expected service life. *See* OIG, *Delivery Vehicle Fleet Replacement*, Report No. DR-MA-14-005 (June 10, 2014), at 1. Much of USPS's letter sorting equipment is "at or near the end of its useful life" and, to save cash, USPS has deferred maintenance on its facilities. *See* USPS, 2019 *Report on Form 10-K*, at 40. USPS has also eliminated thousands of collection boxes, making postal delivery less accessible to its customers. *See* OIG, *Collection Box Removal - Eastern Area*, Report No. DR-AR-16-007 (Aug. 22, 2016).

It makes sense to allow USPS additional rate authority to address the decline in mail density, but there is no reason to address the problem prospectively only. Because the recognized "shortcoming" in the current rate system has existed through all the years of the PAEA era and has negatively affected USPS over that period, the remedy should be applied retroactively as well. The goal should be to make USPS "whole," by putting it in the financial position it would have been in had the "shortcoming" in the rate system not existed.

Indeed, it is arbitrary to apply the remedy starting only in the year the Commission's December 2019 proposal becomes final. There is no reason that the Commission could not have formulated its mail density measure in its original December 2017 proposed rulemaking in this proceeding. If it had, and had that proposal been implemented, USPS would by now have benefitted from two years of much needed additional rate authority. There is no logic to depriving USPS of those two years of additional rate authority simply because the Commission happened to take until December 2019 to propose the mail density measure. There is similarly no logic to depriving USPS of the additional rate authority it needed throughout the PAEA era to address the decline in mail density that occurred over those years.

To rectify the past effect that declining mail density has had on USPS, NALC proposes that the Commission modify its mail density proposal to provide USPS additional rate authority equal to the total increase that USPS would have been allowed had the Commission's proposal been in effect since 2009. Table 1 below reproduces Table IV-3 on page 80 of the Revised NPR, but extends it back in time to include FY 2009 to FY 2012. It shows that during the PAEA period, mail density has fallen a total of 44.24%. As Table 1 indicates, NALC's proposal would yield USPS 19.14% additional rate authority.

Table 1
Hypothetical Density Rate Authority Using Historical Data

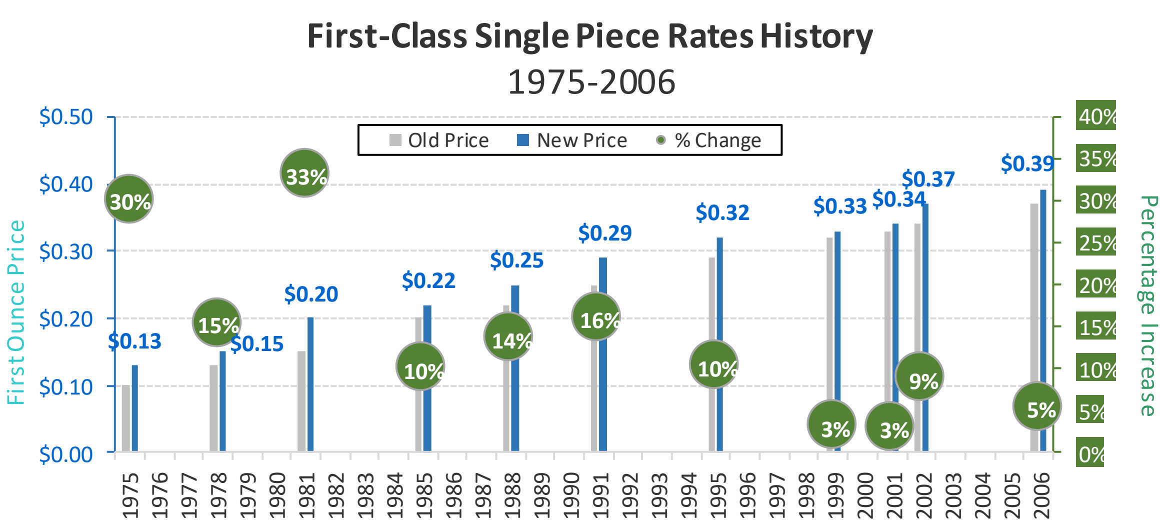
FY Density Rate Authority Authorized	Based on Data from FYs	Institutional Cost Ratio	% Δ Density (MD)	% Δ Density (Total)	Density Rate Authority
2009	2007 & 2008	41.38%	-5.55%	-5.54%	2.29%
2010	2008 & 2009	40.20%	-13.38%	-13.38%	5.38%
2011	2009 & 2010	44.99%	-4.36%	-4.31%	1.94%
2012	2010 & 2011	41.74%	-2.16%	-2.11%	0.88%
2013	2011 & 2012	50.06%	-6.06%	-5.38%	2.69%
2014	2012 & 2013	45.84%	-1.89%	-1.51%	0.69%
2015	2013 & 2014	46.60%	-2.94%	-2.68%	1.25%
2016	2014 & 2015	45.69%	-1.92%	-1.57%	0.72%
2017	2015 & 2016	47.15%	-1.11%	-0.76%	0.36%
2018	2016 & 2017	42.62%	-4.53%	-4.04%	1.72%
2019	2017 & 2018	41.13%	-3.41%	-2.95%	1.21%
Total				-44.24%	19.14%

Source: *See* Docket No. ACR2007, Library Reference USPS-FY07-1, December 28, 2007, Excel file "FY07CRA.xls," tab "CostStats," cells F71:F72 (showing institutional and total cost for FY 2007); Docket No. ACR2007, PRC Report: "Postal Regulatory Commission Annual Compliance Determination United States Postal Service Performance FY 2007", pg. 24, March 27, 2008 (showing Market Dominant and total pieces for FY 2007);
Docket No. ACR2008, Library Reference USPS-FY08-1, December 29, 2008, Excel file "FY08PublicCRA.xls," tab "Cost2," cells F42:F43 (showing institutional and total cost for FY 2008); Docket No. ACR2008, PRC Report: "Postal Regulatory Commission Annual Compliance Determination United States Postal Service Performance FY 2008", pg. 12, March 30, 2009 (showing Market Dominant and total pieces for FY 2008);
Docket No. ACR2009, Library Reference USPS-FY09-1, December 29, 2009, Excel file "FY09PublicCRA.xls," tab "Cost3," cells F34:F35 (showing institutional and total cost for FY 2009); USPS website, Financials, CSV file "Revenue, Pieces & Weight (RPW) FY 2009," (showing Market Dominant and total pieces for FY 2009); Docket No. ACR2010, Library Reference USPS-FY10-1, December 29, 2010, Excel file "FY10PublicCRA.xls," tab "Cost3," cells F35:F36 (showing institutional and total cost for FY 2010); USPS website, Financials, CSV file "Revenue, Pieces & Weight (RPW) FY 2010," (showing Market Dominant and total pieces for FY 2010); United States Postal Service, USPS Annual tables, FY 2018 TFP (Total Factor Productivity), July 16, 2019, Excel file "Table Annual 2018 - 2018 CRA Public.xlsx," tab "Out-46," cells K58:62 (showing delivery points for FYs 2017-2012).

Source: *See* Docket No. ACR2011, Library Reference USPS-FY11-42, December 29, 2011, Excel file "Fy2011_RPWsummaryreport_public.xlsx," tab "FY 2011 Public," cells L78, L193 (showing Market Dominant and total pieces for FY 2011); Docket No. ACR2012, Library Reference USPS-FY12-1, December 28, 2012, Excel file "FY12PublicCRA.xlsx," tab "Cost3," cells F36:F37 (showing institutional and total cost for FY 2012); Docket No. ACR2012, Library Reference USPS-FY12-42, December 28, 2012, Excel file "Fy2012_RPWsummaryreport_public.xlsx," tab "FY 2012 Public," cells L77, L236 (showing Market

Dominant and total pieces for FY 2012); Docket No. ACR2013, Library Reference USPS-FY13-1, December 27, 2013, Excel file "FY13PublicCRA.xlsx," tab "Cost3," cells F35:F36 (showing institutional and total cost for FY 2013); Docket No. ACR2013, Library Reference USPS-FY13-42, December 27, 2013, Excel file "Fy2013_RPWsummaryreport_public.xlsx," tab "FY 2013 Public," cells L78, L238 (showing Market Dominant and total pieces for FY 2013); Docket No. ACR2014, Library Reference USPS-FY14-1, December 29, 2014, Excel file "public_fy14cra.xlsx," tab "Cost3," cells F34:F35 (showing institutional and total cost for FY 2014); Docket No. ACR2014, Library Reference USPS-FY14-42, December 29, 2014, Excel file "Fy2014_RPWsummaryreport_public.xlsx," tab "FY 2014 Public," cells L78, L238 (showing Market Dominant and total pieces for FY 2014); Docket No. ACR2015, Library Reference USPS-FY15-1, December 29, 2015, Excel file "Public-FY15CRAReport.xlsx," tab "Cost3," cells F34:F35 (showing institutional and total cost for FY 2015); Docket No. ACR2015, Library Reference USPS-FY15-42, December 29, 2015, Excel file "FY2015_RPWsummaryreport_public.xlsx," tab "FY 2015 Public," cells L78, L238 (showing Market Dominant and total pieces for FY 2015); Docket No. ACR2016, Library Reference USPS-FY16-1, December 29, 2016, Excel file "Public_FY16CRAReport.xlsx," tab "Cost3," cells F34:F35 (showing institutional and total cost for FY 2016); Docket No. ACR2016, Library Reference USPS-FY16-42, December 29, 2016, Excel file "FY2016_RPWsummaryreport_public.xlsx," tab "FY 2016 Public," cells L78, L240 (showing Market Dominant and total pieces for FY 2016); Docket No. ACR2017, Library Reference USPS-FY17-1, December 29, 2017, Excel file "Public_FY17CRAReport.xlsx," tab "Cost3," cells F34:F35 (showing institutional and total cost for FY 2017); Docket No. ACR2017, Library Reference USPS-FY17-42, December 29, 2017, Excel file "FY2017_RPWsummaryreport_public_eoy.xlsx," tab "FY 2018 Public," cells L78, L240 (showing Market Dominant and total pieces for FY 2017); Docket No. ACR2018, Library Reference USPS-FY18-1, December 28, 2018, Excel file "Public_FY18CRAReport.xlsx," tab "Cost3," cells F34:F35 (showing institutional and total cost for FY 2018); Docket No. ACR2018, Library Reference USPS-FY18-42, December 28, 2018, Excel file "FY2018_RPWsummaryreport_public_eoy.xlsx," tab "FY 2018 Public," cells L74, L236 (showing Market Dominant and total pieces for FY 2018); United States Postal Service, USPS Annual tables, FY 2018 TFP (Total Factor Productivity), July 16, 2019, Excel file "Table Annual 2018 - 2018 CRA Public.xlsx," tab "Out-46," cells K59:69 (showing delivery points for FYs 2013-2018).

NALC's proposal would generate substantial additional rate authority, but would not prejudice the mailer community. First, USPS would not be obligated to use the additional authority and, to the extent it chose to use some or all of it, could phase in the postage increases over time. Even if USPS chose to implement the entire additional rate authority at once, the resulting price hike would not be unprecedented. A one-time rate increase of that magnitude would not be out of line with past one-time rate increases. As the chart below shows, in the years prior to the PAEA, USPS increased First-Class Mail rates by 10 percent or more at least seven times.



Moreover, the one-time rate increase that NALC's proposal would allow would be far less than increases seen in recent years in other major countries. In 2012, the United Kingdom raised its postal rates by 30%; in 2014, Canada raised its rates by 35%; in 2015, Italy raised its rates by 36%; and in 2016, Australia raised its postage rates by 43%.[2] Even with NALC's proposed increase, mail in the United States would remain what USPS calls a "bargain" compared to the prices charged by postal carriers elsewhere. *See* USPS *FY2019 Annual Report to Congress*, at 8.

Nor is there reason to believe that such a one-time increase would have an undue impact on mail volume. The 2014 exigent rate increase of 4.3%, combined with the CPI-based increase of 2%, effectively raised rates by 6.3% that year. Despite dire predictions from some quarters, that rate hike had very modest effects on mail volume.

In its December 2017 proposal, the PRC proposed giving USPS authority to raise market dominant rates 2% over CPI for five years. *See* 2017 Proposal at 42. NALC explained in its comment on that proposal that the Commission's 2%+CPI idea was inadequate, and proposed that USPS be permitted a one-time "true up" of at least 10%. *See* Feb. 28, 2018 *Comment of the National Ass'n of Letter Carriers, AFL-CIO*, at 9-13, 19-21. In the Revised NPR, the Commission has withdrawn its 2%+CPI proposal, making even more compelling the need for some sort of "true up" in USPS's rate authority that would address the negative impact of the CPI-U cap during the PAEA era. NALC's proposed retroactive mail density measure would serve that purpose.

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[2] Sources: United Kingdom: https://www.theguardian.com/news/datablog/2012/mar/27/60p-price-stamp-royal-mail;
Canada: https://www.linns.com/news/us-stamps-postal-history/2015/july/canada-post-plans-2016-postage-rate-increase.html;
Italy: https://www.conflombardiavarese.it/newsdoc/2015/09/30-09-2015-tariffe-poste.pdf at pg. 3;
Australia: https://www.theguardian.com/business/2016/jan/04/australia-post-increases-stamp-prices-for-regular-mail-from-70-cents-to-1;

In considering whether to apply its mail density proposal retroactively, the Commission should note that USPS in 2007 had one last opportunity to initiate a rate proceeding under the pre-PAEA, cost-based rate system. *See* 39 U.S.C. §3622(f). Such a rate proceeding, and the resulting price increases, would have given USPS a higher baseline of market dominant rates as it entered the price cap era.

USPS's 2007 decision to forgo a rate proceeding, regrettable now, was understandable then. At the time, few could imagine the coming "perfect storm" of deep recession, steady volume declines, and stagnant inflation. *See* OIG, *Price Cap Formula*, at ii (when the PAEA price cap was formulated, few foresaw the impact on USPS of the combined effect of the price cap and mail volume decline). The PAEA price cap was designed for an environment of growing mail volume and normal inflation rates, *see id*. at iii, and, like the PAEA's framers, USPS assumed those would be the conditions in which it would operate in the future. Moreover, at the time, USPS's operations were profitable. *See* USPS, *FY 2006 Annual Report*, at 3.

As it turned out, shortly after the PAEA price cap took effect, the pillars on which it was meant to operate -- rising mail volume and normal inflation -- ceased to exist.

Now is the time to allow USPS to make up in part for that lost 2007 opportunity, by giving it additional authority to raise rates in response to past declines in mail density. The timing is particularly good. In 2007, souring macroeconomic conditions may have made a rate increase seem imprudent. But we now have a healthy economy, with unemployment at historical lows, personal income rising, and consumer confidence at a robust level.[3]

[3] Unemployment is 3.5%. *See* https://www.bls.gov/news.release/pdf/empsit.pdf. Personal income has grown for months. *See* https://www.bea.gov/news/2019/personal-income-and-outlays-november-2019. In December 2019, the University of Michigan Index of Consumer Sentiment was 99.3. For context, the average level over the last fifty years has been 86.5. *See* https://isr.umich.edu/news-events/news-releases/consumers-optimistic-about-economic-prospects/

The proposed retroactive remedy would also help compensate for the expiration in FY 2016 of the "exigent" rate surcharge. The exigent increase was intended to allow USPS to recover revenue it lost when the Great Recession accelerated the decline of mail volume. *See* December 24, 2013 *Order Granting Exigent Price Increase*, Order No. 1926, Docket No. R2013-11. Yet, the Commission capped the total "exigent" adjustment at a finite amount -- less than $4 billion -- reasoning that the permanently lower level of mail volume had become a "new normal" that could not be justified as "exigent" within the meaning of the PAEA. *See* July 29, 2015 *Order Resolving Issues on Remand*, Order No. 2623, Docket No. R2013-11R, at 1,16. Whatever the merits of the Commission's legal analysis, the exigent adjustment was insufficient. NALC's proposal here would help rectify the shortcomings of the temporary exigent increase.

For all these reasons, the Commission should modify its mail density proposal by providing USPS additional rate authority equal to the total increase that USPS would have been allowed had the Commission's proposal been in effect since 2009.

II. THE COMMISSION SHOULD PROVIDE USPS ADDITIONAL RATE AUTHORITY TO PAY FOR RHBF NORMAL COSTS AND ALSO FOR PAST UNPAID RHBF CONTRIBUTIONS

Like its mail density proposal, the Commission's proposal regarding retiree costs is sensible, but inadequate. The proposed measure will provide welcome relief from the financial burden of future RHBF, CSRS and FERS amortization payments, but will do nothing to address the normal cost portion of future RHBF payments. Normal costs constitute a significant portion of USPS's retiree obligations. Nor does the Commission's proposal address the required RHBF contributions that USPS has failed to pay since FY2012. Accordingly, NALC proposes that the Commission modify its retiree cost proposal to allow USPS additional authority to address not only its amortization costs but also RHBF normal costs, as well as past unpaid RHBF contributions. Such a modification will provide USPS more complete relief, and better position it to maintain financial stability.

The Commission makes an arbitrary distinction when it proposes giving USPS rate authority to cover *future* RHBF contributions but not *past* ones. For example, the Commission could have formulated its retiree cost proposal in its original December 2017 proposed rulemaking in this proceeding. If it had, and if the proposal had been implemented, USPS would have had additional rate authority for the FY 2018 and FY 2019 RHBF contributions. There is no logic to depriving USPS of such authority simply because the Commission happened to take until December 2019 to propose its retiree cost proposal. There is similarly no logic to depriving USPS of the additional rate authority it needed to make the contributions for FY 2012 through FY 2017.

There is also no principled reason for giving USPS rate authority to pay RHBF amortization costs but not normal costs. Both are costs of compensating employees for service performed. The only difference between the two is whether the service was performed in the current year (normal cost) or before (amortization cost). USPS may account for them differently -- treating normal costs as a labor cost instead of a legacy cost -- but they both constitute an obstacle to USPS achieving net income. Accordingly, the Commission's proposal, which aims to shore up USPS's financial health, *see* Revised NPR, at 91, should not distinguish between these two cost items.

CONCLUSION

For the reasons set forth above, the Commission should adopt NALC's proposals. In particular, it should (1) modify its mail density proposal to allow USPS additional rate authority equal to the total increase that USPS would have been allowed had the Commission's proposal been in effect since 2009, and (2) modify its retiree cost proposal to allow USPS additional authority to pay past unpaid RHBF contributions and future RHBF normal costs.

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